IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10021 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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PATEL GAYATRIBEN BHOGILAL - Petitioner(s)
Versus
DIRECTOR OF PRIMARY EDUCATION & 2 - Respondent(s)

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Appearance :
MR PARIMAL P PATEL AND MR PS PATEL for the Petitioner
MS MANISHA L. SHAH A.G.P. for Respondent Nos.1 and 2.
MR MANISH J PATEL for Respondent NO. 3

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/03/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has prayed for a direction to the respondents to consider her case for appointment to the post of Vidya Sahayaks by allowing additional 5% marks as Sports participant.

2. Facts leading to the present petition are that the

petitioner claims to have participated in the wrestling events so as to be eligible to get the benefits of additional marks for the purpose of selection for the post of Vidya Sahayaks as envisaged by the State Government in the Government Resolutions dated 25.02.1980 and 01.08.1990.

2.1 The petitioner had applied for the post of Vidya Sahayak, advertisement for which was issued by the Sabarkantha District Panchayat on 14.07.2004. The petitioner besides possessing necessary educational qualifications, also had certificates of sports participation. The petitioner earlier approached this Court by filing Special Civil Application No.13087 of 2004. The petition came to be disposed of by an order dated 14.12.2004. The authorities were directed to find out the genuineness of the certificate produced by the petitioner with respect to her sports participation and to take decision in this regard within stipulated period. It was further directed that if it is found that the certificates produced by the petitioner are genuine, she may be given relaxation as per the Government Resolutions dated 25.02.1980 and 01.08.1990.

3. The exact contents of Government Resolutions dated 25.02.2000 and 01.08.1990 need not be gone into in this

order. Suffice it to say the same envisages giving certain additional weightage in favour of the candidates with sports participation at certain level of competition in specified sports. It is not in dispute that the petitioner qualified on account of her participation in wrestling to receive the benefits flowing from the said Resolutions. The respondents accordingly considered the case of the petitioner for appointment to the post of Vidya Sahayaks. The petitioner was receiving 76.39 percentage of marks as per formula evolved by the respondents for selection to the post in question. To which 5% of 76.39 percentage was added to her tally. Her total tally came to 80.10%. It was found that in General Category of candidates to which the petitioner belongs, last appointment was made of candidate who had 80.73 % of marks.

4. The authorities therefore, found that the petitioner cannot be placed in the select list even with the additional weightage of her sports participation. This was conveyed to the petitioner by the District Primary Education Officer by letter dated 21.04.2005 produced at Annexure -B to the petition.

5. To the above factual aspects involved in this

petition, there is no dispute from either side. The short contention of the petitioner is that this Court under identical circumstances while disposing Special Civil Application No. 15018 of 2004 and connected matters by order dated 22.02.2005, provided that the candidates should receive full 5% weightage in addition to marks they may have received. Learned Advocate for the petitioner points out that factual background in the present petition is similar to one arising in Special Civil application No. 15018 of 2004 and connected matters.

6. The respondents appearing in response to the notice issued by this Court are unable to point out material differences between the two situations.

7. It can thus be seen there is no dispute about the eligibility of the petitioner to receive additional weightage pursuant to Government Resolution dated 25.02.1980 and 01.08.1990. Only question is whether she should get full 5% marks as additional weightage or she should get additional weightage to the extent of 5% of her marks.

7.1 By an order dated 22.02.2005 passed in Special

Civil Application No. 15108 of 2004 and connected matters, this Court had in principle upheld the interpretation of the Government of the said Resolutions and found that true interpretation of the Government Resolution in question would mean that sports candidates can be considered by reduction of not more than 5% of the merit requirement of the marks received by the meritorious candidates. It was observed that thus relaxation provided by the Government in its Resolution dated 25.02.1980 would ensure that the sports persons can compete with other selected candidates by receiving additional marks which could not exceed 5% of the marks received by the last selected candidate. While disposing of the said petition, this Court found that prior to selection process in question therein, all districts in the State of Gujarat were following pattern of giving full 5% marks for sports participation and it was sought to be changed only in one or two isolated districts that too after the selection process was in its advanced stage. This Court therefore, in the selection process in question provided that the candidate shall receive full 5% weightage. Observations made by this Court in this regard may be noted, which reads as under:

> “13. This however, does not solve the issues arising in these petitions. As noted

earlier, prior to the current selection process all districts in the State of Gujarat were following the pattern of giving full 5% weightage to the candidates having sports certificates. This is sought to be changed in isolated districts as in the present one and one or two other districts. All other districts have continued to follow the same pattern for the selection held in the previous year. There is some divergence of opinion even between the stand of the General Administration Department and that adopted by the Directorate of Primary Education. The clarification of the Directorate of Primary Education was made available to the district in question long after the advertisement was issued and call letters were also issued in favour of the candidates applying the old formula of giving full 5% weightage to the sports persons. It would therefore be highly inequitable to permit the respondent No.3 to change the parameters for selection at least for the current selection process. When other districts havefollowed different parameters, in overwhelming majority;when the respondent No.3 had also issued call letters in favour of the petitioners on the basis of earlier formula and when there was no clarity and uniformity even between different limbs of the Government, it would be highly unfair, unjust and inequitable to shut out the case of the present petitioners atleast for the present selection process.

14. Thus, while upholding the interpretation of the G.R dated 25.2.1980, as adopted by the GAD in its affidavit-in-reply, I find that it would not be equitable and just to reject the candidature of the petitioners on the basis of the modified formula. In the affidavit-in-reply filed by the respondent No.3 it is clearly pointed out that there are vacancies available even after fully operating select list drawn by the respondent No.2. The question of granting equitable relief in favour of the petitioners would have taken a somewhat different turn if vacancies were not available and all appointments had been made and posts already filled-up. In the present case however, when I find that the

vacancies are still available, it would be just and proper that the petitioners receive full benefit of the conclusions that I have reached hereinabove.

15. To reiterate, though I find that the interpretation as adopted by the GAD in its affidavit-in-reply concerning provisions of G.R dated 25.2.1980 are just and proper, the respondent No.3 ought not to have applied the same with respect to the selection process in question for the foregoing reasons, which I have indicated above. In view of the conclusion and in view of the fact that sufficient number of vacancies are still available, the respondent No.3 is directed to consider the case of the petitioners by applying full 5% weightage in addition to the marks that they have received and complete the selection process in their cases. If at the end of such exercise petitioners deserve a place in the select list, they shall be granted appointment to the available vacancies with effect from the due dates, but without any wages for the past period."

7.3 Factual background in the present case being similar, it would be proper to adopt the same methodology in the present case also.

8. Learned Advocate Mr. Manish Patel for the District Administration submitted that with full 5% additional weightage, the petitioner may have come within the select list at the relevant time. However, presently, it has to be ascertained whether vacancy is available or not. To accommodate the petitioner no Vidya Sahayak who is already appointed can be disturbed that too in his

absence. Without availability of vacant post there cannot be any direction to appoint the petitioner. It would be therefore, be proper to direct that the petitioner be considered for first available vacancy on the basis of her marks and giving her 5% additional weightage. If it is found that in the relevant selection process, she would have been placed in the selection list on the basis of this criteria, she may be offered appointment on the next available vacancy as a fresh appointee.

9. With these directions, the petition is disposed of. Rule is made absolute to the above extent. No order as to costs. Direct service permitted.

[Akil Kureshi, J.]

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